

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.12.2006

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

Writ Petition No.10822 of 2006

and

WPMP No.12261 of 2006

A.Asokan

Petitioner

v.

1. The Commissioner of Customs
(Exports), Chennai Custom House,
60 Rajaji Salai, Chennai 600 001.

2. The Deputy Commissioner of Customs,
Revenue Recovery Unit,
Chennai Custom House,
60 Rajaji Salai, Chennai 1.

Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issue of writ of certiorarified mandamus calling for the records of the second respondent in his file RRU 7/2001-Appg. and to quash the orders dated 13.08.2004 and 30.08.2004 as modified by order dated 15.09.2004.

For Petitioner : Mr.K.Venkatapathi,
Senior Counsel, for
Mr.K.V.Sundararajan

For Respondents : Mr.V.T.Gopalan,
Addl Solicitor General,
assisted by Mr.P.Wilson,
Asst. Solicitor General

ORDER

This writ petition is filed for the issue of writ of certiorarified mandamus to call for the records relating to the impugned order of attachment of the immovable property at No.3, I

Street, Cenotaph Road, Teynampet, Chennai 600 018 of the petitioner passed by the Tax Recovery Officer, the Deputy Commissioner of Customs, Revenue Recovery unit and to quash the same.

2. It is contended by the learned counsel for the petitioner that the petitioner being a Director cannot be issued with an order which is impugned in this writ petition as it is the company which is the defaulter and not the petitioner. The Customs (Attachment of Property of Defaulters for recovery of Government dues) Rules, 1995 has been taken in aid to buttress the contention that the property of the petitioner, who is a director of the company, cannot be attached. The defaulter is defined in Rule 2 (vi) of the Rules as a person from whom Government dues are recoverable under the Act. Admittedly, the petitioner is not the defaulter. The defaulter is only the company. However, learned Solicitor General submitted that the Court has to pierce the corporate veil and find out the real person from whom the amount has to be recovered and the petitioner being the director, is responsible for the payment of dues and the property has been rightly attached.

3. This issue has been considered by various High Courts in the cases of In re Behara Lachanna Patnaick and sons and Kallepalli Chiranjeevi, AIR 1953 Madras 332; In re Desi Raju Venkata Krishna Sarma, AIR 1955 Andhra 26; Hrushikesh Panda v. State of Orissa, 1996 (83) ELT 504 (Ori); and Sunil Parmeshwar Mittal v. Dy. Commissioner (Recovery Cell), C. Ex., Mumbai-I, 2005 (188) ELT 268 and it has been decided that the Director of the company should not be penalised for the amount due from the company.

4. In view of the settled position of law, I am of the view that the petitioner has made out a case for interference by this Court. The writ petition is allowed. No costs. The connected miscellaneous petition is closed.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

mf

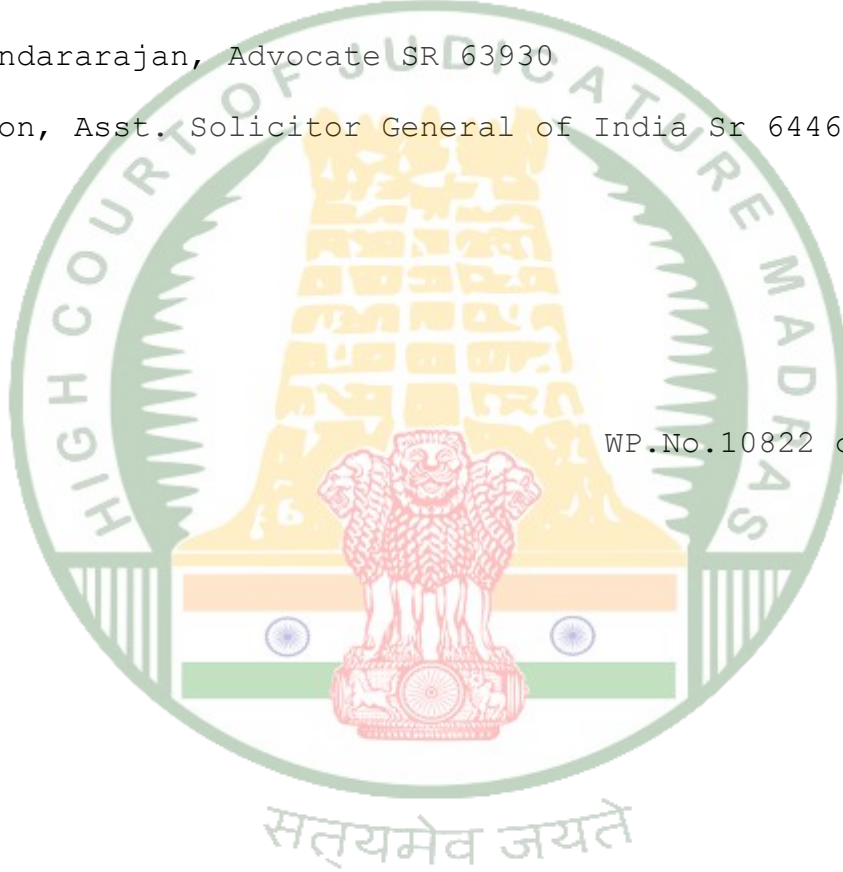
To

1. The Commissioner of Customs
(Exports), Chennai Custom House,
60 Rajaji Salai, Chennai 600 001.
2. The Deputy Commissioner of Customs,
Revenue Recovery Unit,
Chennai Custom House,
60 Rajaji Salai, Chennai 1.

+1cc to Mr.K.V.Sundararajan, Advocate SR 63930

+1cc to Mr.P.Wilson, Asst. Solicitor General of India Sr 64463

BK (CO)
km/02.01.



WP.No.10822 of 2006

WEB COPY